

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

FEB 28 2002

OFFICE OF
MANAGING DIRECTOR

Anthony J. Perillo
Infinity Communications Group Trust
Post Office Box 1769
Big Bear Lake, California 92315

Re: Infinity Communications Group, Inc.
Fee Control No.: 00000RRROG-02-015

Dear Mr. Perillo:

This is in response to your letter, dated January 10, 2002, filed on behalf of Infinity Communications Group Trust (Infinity Trust). Your January 10 letter was filed in response to the decision of the Office of Managing Director finding that neither Infinity Communications Group, Inc. (Infinity)¹ nor you, as Infinity's corporate representative, can assert the Fifth Amendment privilege against self-incrimination to avoid filing FCC Form 159-W, Interstate Telephone Service Provider Regulatory Fee Worksheet, FCC Form 499-A, Telecommunications Reporting Worksheet, and FCC Form 159, Remittance Advice, on behalf of Infinity in connection with its fiscal year (FY) 2001 regulatory fee. See Letter from Mark A. Reger, Chief Financial Officer, Office of Managing Director, FCC, to Anthony J. Perillo (dated Nov. 27, 2001) (*Letter Decision*). The *Letter Decision* also denied Infinity's apparent request for a waiver of the FY 2001 \$1,980.00 regulatory fee, and directed Infinity to pay the regulatory fee plus a 25 percent late charge penalty of \$495.00 (for a total of \$2,475.00) within 30 days. Our records reflect that the regulatory fee and associated late charge penalty have not been paid. Our records also reflect that the associated Form 159-W, Form 499-A, and Form 159 have not been filed.

You appear to argue in your January 10 letter that you, as the trustee of Infinity Trust, may "by case law" (which you do not cite) assert the Fifth Amendment privilege against self-incrimination to avoid the Commission's request for information regarding Infinity as set forth on Form 159-W, Form 499-A, and Form 159² in connection with Infinity's

¹ You state in your January 10 letter that Infinity "was formerly [*sic*] dissolved" and that Infinity Trust, "being the sole stockholder, was the recipient of all assets and liabilities of the corporation including all records thereof."

² Form 159-W is a regulatory fee worksheet used by the Commission and interstate telephone service providers to calculate FY regulatory fees and is based upon information previously provided by the interstate telephone service providers on Form 499-A. Form 499-A is the worksheet used by the Commission and telecommunications providers to determine contribution amounts to the Telecommunications Relay Service, Universal Service, Number Administration, and Local Number Portability Support Mechanisms.

FY 2001 regulatory fee. The Fifth Amendment of the Constitution provides that “[n]o person . . . shall be compelled in any criminal case to be a witness against himself.” U.S. Const. amend. V. The Fifth Amendment’s proscription against self-incrimination is a personal privilege and may only be asserted by natural persons. *United States v. White*, 322 U.S. 694, 698 (1944). When the privilege is invoked to protect the impersonal interests of an organization, rather than the personal and private interests of an individual within the organization, the protection of the Fifth Amendment is not available. *Id.* at 701. Under these circumstances, the Fifth Amendment privilege against self-incrimination is not available whether it is being asserted by the collective entity as a distinct legal body or by one of its representatives acting in an official capacity. *Id.* at 699 (individuals, when acting as representatives of a collective group “assume the rights, duties and privileges of the artificial entity or association of which they are agents or officers” and therefore “have no privilege against self-incrimination”). The privilege against self-incrimination is therefore not available to trusts, corporations, associations, or partnerships, or to individuals when acting as representatives of such collective entities. *Wilson v. United States*, 221 U.S. 361 (1911); *Rogers v. United States*, 340 U.S. 367 (1951); *Bellis v. United States*, 417 U.S. 85 (1974); *Watson v. Commissioner of Internal Revenue*, 690 F.2d 429 (5th Cir. 1982) (*per curiam*); *United States v. Harrison*, 653 F.2d 359 (8th Cir. 1981); *see also United States v. White*, 322 U.S. at 699 (because the “privilege against self-incrimination is a purely personal one, it cannot be utilized by or on behalf of any organization”).

Based on the record before us, we find that Infinity Trust is a collective entity that lacks standing to assert the privilege against self-incrimination under the Fifth Amendment. We also find that you, as a trustee of Infinity Trust, cannot invoke the Fifth Amendment privilege against self-incrimination to avoid the Commission’s request for information regarding Infinity on Form 159-W, Form 499-A, and Form 159. These forms request factual information regarding, for example, Infinity’s revenues, various addresses, telephone number, and regulatory fee. The information requested relates to Infinity’s corporate interests and not to information regarding your personal and private interests so as to justify the assertion of a Fifth Amendment privilege against self-incrimination. We therefore find that you cannot assert the Fifth Amendment privilege against self-incrimination to avoid filing Form 159-W, Form 499-A, and Form 159 on behalf of Infinity.

As noted above, our records reflect that a Form 159-W, a Form 499-A, and a Form 159 have not been filed on behalf of Infinity. The information you provide with the instant letter which you claim meets an unspecified *de minimis* standard with respect to the information requested on Form 499-A regarding Infinity’s corporate and financial information is insufficient. The Commission is authorized to request the information set forth on Form 159-W, Form 499-A and Form 159 and Infinity Trust is required to respond truthfully. *See* 47 C.F.R. §1.17. Further, Infinity Trust is specifically required to


Form 499-A and Form 159 are referenced on Form 159W. *See also Public Notice, FY 2001 Common Carrier Regulatory Fees*, 2001 WL 872411, (dated Aug. 3, 2001).

file Form 159 (along with its FY 2001 regulatory fee) under 47 C.F.R. §1.1157(c) or be subject to a 25 percent penalty for failure to file. *See* 47 C.F.R. §1.1157(c). In addition, Infinity Trust is specifically required to file Form 499-A or be considered in violation of 47 C.F.R. §§ 52.17, 52.32, 54.713, and 64.604. *See* 47 C.F.R. §52.713 (failure to file Form 499-A “may subject the contributor to the enforcement provisions of the [Communications] Act[, as amended,] and any other applicable law”).

As noted above, our records also reflect that Infinity’s \$1,980.00 FY 2001 regulatory fee, plus the 25 percent late charge penalty of \$495.00, has not been paid.³ If this debt is not paid, it may be transferred to the Secretary of the Treasury for collection or to the United States Department of Justice to commence a lawsuit to enforce payment, and/or to apply other administrative sanctions. 47 C.F.R. §§1.1161, 1.1164, 1.1940. If the Commission has to initiate collection efforts to obtain the amount owed, Infinity may be charged the accompanying administrative costs. Because Infinity failed to pay the regulatory payment and late charge penalty within the 30-day period for doing so, the payment may be subject to interest. Finally, we reiterate that Infinity Trust is required to file all FCC forms in accordance with the Commission’s rules. Accordingly, to the extent that your letter is a petition for reconsideration of the *Letter Decision*, your request is denied.

If you have any questions concerning this matter, please contact the Revenue & Receivables Operation Group at (202) 418-1995.

Sincerely,



 Mark A. Reger
Chief Financial Officer

³ We note that you do not reassert your apparent request for waiver of the FY 2001 regulatory fee; you state that Infinity Trust “will pay all requisite fees prescribed by the FCC.”

FCC/MLLON

JAN 15 2002

Infinity Communications Group Trust

P.O. Box 1769

Big Bear Lake, CA 92315

T: 909-866-8112

F: 909-866-4304

E: infinity@bbv.net

From the desk of

Anthony J. Perillo - Trustee

"Failure is the opportunity to begin again, more intelligently." – Henry Ford

10 January 2002

Mr. Mark A. Reger
Chief Financial Officer
Federal Communications Commission
Regulatory Fees
P.O. Box 358835
Pittsburgh, PA 15251-5835

Certified Mail #7000 1530 0004 2148 8168

RE: Infinity Communications Group, Inc.
EIN 52-2125042
FRN 0005-0088-59

Dear Mr. Reger:

We are in receipt of your correspondence dated 27 November, 2001, in response to our previous correspondence, and advise the following.

First and foremost, you are correct that we acknowledge the regulatory fees as being lawfully required and therefore, we trust that you recognize that our position is not an attempt to abscond from paying fees. We are however vehemently opposed to the invasiveness of your reporting requirements.

Continuing, we draw your attention to the enclosed correspondence dated 26 March, 2001 to the Form 499 data Collection Agent, together with the attachment thereto comprised of our Income Statement.

We also draw your attention to our TRS Payment Identification form and payment of the appropriate fee.

Enclosed herewith is the required documentation to evidence our assertion of the *de minimis* standard with respect to Form 499-A.

Finally and with respect to Infinity Communications Group, Inc., the corporation that formerly did business as such was formerly dissolved. Infinity Communications Group Trust, being the sole stockholder, was the recipient of all assets and liabilities of the corporation including all records thereof.

Pursuant to United States v. Davis, 636 F.2d 1028, at 1043 (5th Cir. 1981). "Their [Supreme Court] cumulative teaching is that any incriminating papers in the actual or constructive possession of an individual, which he holds in his individual capacity, ...and which he wrote or which were written under his immediate supervision, are absolutely protected by the Boyd principle from production by subpoena or equivalent process, regardless of whether they are business-related or more inherently personal in content."

...One of the objects of such organizations is to obtain for the associates most of the advantages of corporations without the authority of any legislative act and with freedom from the restrictions and regulations generally imposed by law upon corporations. Ashwoth v. Hagan Estates, (1935) 165 Va 151, 181 SE 381.

"Because of what appears to be a lawful command on the surface, many Citizens, because of respect for the law, are cunningly coerced into waiving their rights, due to ignorance."
U.S. v. Minker, 350 U.S. 179, 187

Trustees are deemed, by case law, to be principals as are sole proprietors, rather than agents in a representative capacity, and therefore the foregoing case law applies, as if the Contractual Trust were a natural individual ore sole proprietorship.

Infinity Communications Group Trust will soon be undertaking all requisite registration requirements pursuant to FCC regulations, and will pay all requisite fees prescribed by the FCC. Infinity Communications Group Trust will provide basic financial information which is prepared based upon neutral principles of accounting, however, Infinity Communications Group Trust will not disclose any information which in its sole determination, is invasive and in violation of the confidentiality provisions of the trust.

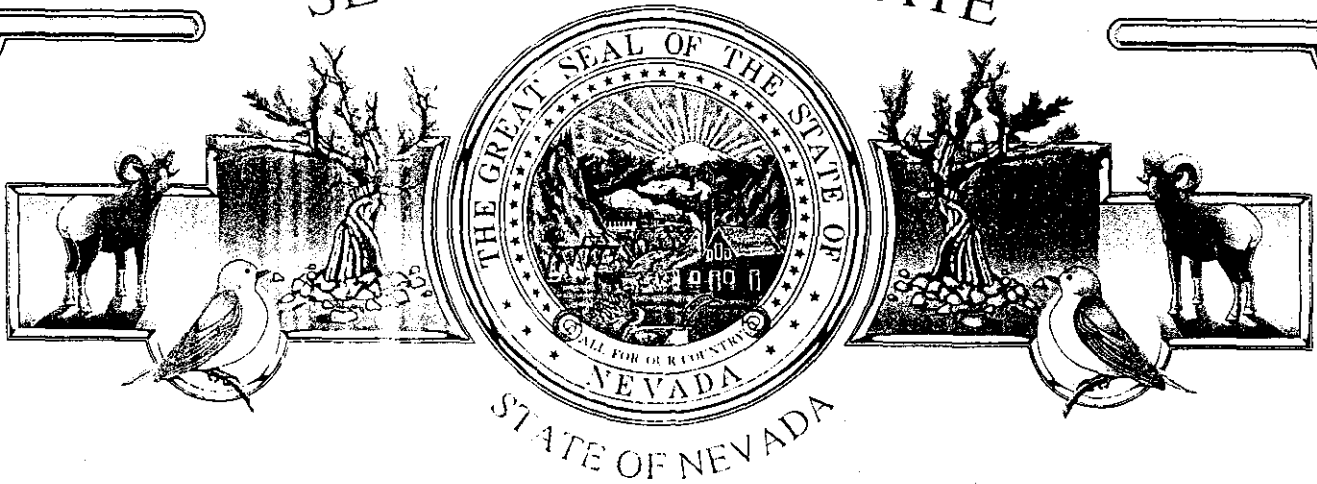
In closing, we trust that any issues regarding law principles, payment of fees, and the such have been put to rest, and the matter closed.

Respectfully,



Anthony J. Perillo
Trustee

SECRETARY OF STATE



CERTIFICATE OF DISSOLUTION

I, DEAN HELLER, the duly qualified and elected Nevada Secretary of State, do hereby certify that I am, by the laws of said State, the custodian of the records relating to Title 7 of the Nevada Revised Statutes which are either presently in a status of good standing or were in good standing for a time period subsequent of 1976 and that I am the proper officer to execute this certificate.

I further certify that **INFINITY COMMUNICATIONS GROUP, INC.**, duly organized and existing under and by virtue of the laws of the State of Nevada, did, on the 26th day of December, 2001, file in the office of Secretary of State a **CERTIFICATE OF DISSOLUTION**, that said action has been endorsed on all records of the same, and that it is hereby dissolved.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of State, at my office, in Carson City, Nevada, on December 26, 2001.

DEAN HELLER
Secretary of State

By

Certification Clerk

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

NOV 24 2001

FCC/MELLON

JAN 15 2002

Anthony J. Perillo
Infinity Communications Group, Inc.
Post Office Box 1769
Big Bear Lake, California 92315

Re: Infinity Communications Group, Inc.
Fee Control No.: 00000RROG-01-049

Dear Mr. Perillo:

This is in response to your correspondence (styled as a "Declaration") dated September 15, 2001, filed on behalf of Infinity Communications Group, Inc. (Infinity), in which you assert that the Commission "cannot compel" you to file FCC Form 159-W, Interstate Telephone Service Provider Regulatory Fee Worksheet, and "all related forms" based upon your Fifth Amendment privilege against compulsory self-incrimination. *September 15 Letter* at 1. You also claim that Infinity is not required to pay its fiscal year (FY) 2001 regulatory fee (which you acknowledge is "lawfully required") because Infinity meets "the *de minimis* standard[,] a standard which you do not identify or otherwise explain. *September Letter* at 2.

The Fifth Amendment of the Constitution provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. The Fifth Amendment's proscription against self-incrimination is a personal privilege and may only be asserted by natural persons. *United States v. White*, 322 U.S. 694, 698 (1944). When the privilege is invoked to protect the impersonal interests of an organization, rather than the personal and private interests of an individual within the organization, the protection of the Fifth Amendment is not available. *Id.* at 701. Under these circumstances, the Fifth Amendment privilege against self-incrimination is not available whether it is being asserted by the organization as a distinct legal body or by one of its representatives acting in an official capacity. *Id.* at 699 (individuals, when acting as representatives of a collective group such as a corporation, "assume the rights, duties and privileges of the artificial entity or association of which they are agents or officers" and therefore "have no privilege against self-incrimination"). The privilege against self-incrimination is therefore not available to corporations, associations, or partnerships. *Wilson v. United States*, 221 U.S. 361 (1911); *Rogers v. United States*, 340 U.S. 367 (1951); *Bellis v. United States*, 417 U.S. 85 (1974); *see also United States v. White*, 322 U.S. at 699 (because the "privilege against self-incrimination is a purely personal one, it cannot be utilized by or on behalf of any organization, such as a corporation").

Infinity, as a corporate entity, lacks standing to assert the privilege against self-incrimination under the Fifth Amendment. As Infinity's (apparent) corporate representative, you cannot invoke the Fifth Amendment privilege against self-incrimination to avoid the Commission's request for information regarding Infinity as set forth on Form 159-W and related forms, including FCC Form 499-A, Telecommunications Reporting Worksheet, and FCC Form 159, Remittance Advice.¹ Forms 159-W, 499-A, and 159 request factual information regarding, for example, Infinity's revenues, various addresses, telephone number, and regulatory fee. The information requested on these forms relates to Infinity's corporate interests and not to information regarding your personal and private interests so as to justify the assertion of a Fifth Amendment privilege against self-incrimination. We therefore find that you cannot assert the Fifth Amendment privilege against self-incrimination to avoid filing Form 159-W and "related forms" (including Forms 499-A and 159) on behalf of Infinity.

Our records reflect that Infinity has not filed a Form 159-W, a Form 499-A, or a Form 159. In this regard, we find that the Commission is authorized to request the information set forth on these forms and Infinity is required to respond truthfully. *See* 47 C.F.R. §1.17. Further, Infinity is specifically required to file Form 159 (along with its FY 2001 regulatory fee) under 47 C.F.R. §1.1157(c) or be subject to a 25 percent penalty for failure to file. *See* 47 C.F.R. §1.1157(c). In addition, Infinity is specifically required to file Form 499-A or be considered in violation of 47 C.F.R. §§ 52.17, 52.32, 54.713, and 64.604. *See* 47 C.F.R. §52.713 (failure to file Form 499-A "may subject the contributor to the enforcement provisions of the [Communications] Act[, as amended,]and any other applicable law").

Our records also reflect that Infinity has not paid its FY 2001 regulatory fee. You claim that Infinity is not required to pay its FY 2001 regulatory fee because it meets "the *de minimis* standard[,]" a standard which, as indicated above, you do not identify or otherwise explain. To the extent that you may be requesting that the Commission waive Infinity's FY 2001 regulatory fee, we note that the Commission may waive, reduce, or

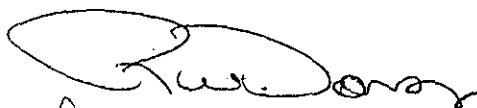
¹ Form 159-W is a regulatory fee worksheet used by the Commission and interstate telephone service providers to calculate FY regulatory fees and is based upon information previously provided by the interstate telephone service providers on Form 499-A. Form 499-A is the worksheet used by the Commission and telecommunications providers to determine contribution amounts to the Telecommunications Relay Service, Universal Service, Number Administration, and Local Number Portability Support Mechanisms. Form 499-A and Form 159 are referenced on Form 159W. *See also Public Notice, FY 2001 Common Carrier Regulatory Fees*, 2001 WL 872411, (dated Aug. 3, 2001).

defer regulatory fees only upon a showing of good cause and a finding that the public interest will be served thereby.² We find that you have neither demonstrated that the interests of Infinity in not paying the regulatory fee overrides the public interest nor otherwise established that the public interest would be served by a grant of your request for relief. Further, you acknowledge that the fee is "lawfully required[.]" We therefore deny your request for relief.

The Communications Act of 1934, as amended, requires the Commission to assess a late charge penalty of 25 percent on any regulatory fee not paid in a timely manner. It is the obligation of the licensees responsible for regulatory fee payments to ensure that the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year. Your request does not indicate or substantiate that Infinity met this obligation. Therefore, payment of Infinity's FY 2001 regulatory fee is now due. \$1,980.00, plus the 25 percent late charge penalty of \$495.00, should be submitted, together with a Form 159 (copy enclosed) within 30 days of the day of this letter. If this debt is not paid, it may be transferred to the Secretary of the Treasury for collection or to the United States Department of Justice to commence a lawsuit to enforce payment, and/or to apply other administrative sanctions. 47 C.F.R. §§1.1161, 1.1164, 1.1940. If the Commission has to initiate collection efforts to obtain the amount owed, Infinity may be charged the accompanying administrative costs. Any payment received more than 30 days after the date of this letter may also be subject to interest. Finally, we note that Infinity is required to file all FCC forms in accordance with the Commission's rules.

If you have any questions concerning this matter, please contact the Revenue & Receivables Operation Group at (202) 418-1995.

Sincerely,



for Mark A. Reger
Chief Financial Officer

Enclosure

² See 47 U.S.C. §159(d); 47 C.F.R. §1.1166; see also *Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Report and Order*, 9 FCC Rcd 5333, 5344 (1994), on recon., *Memorandum Opinion and Order*, 10 FCC Rcd 12,759, para. 12 (1995) (regulatory fees may be waived, deferred, or reduced on a case-by-case basis in extraordinary and compelling circumstances upon a clear showing that a waiver would override the public interest in reimbursing the Commission for its regulatory costs).



FCC/MELLON

JAN 15 2002

INFINITY COMMUNICATIONS
G R O U P

26 March 2001

Form 499 Data Collection Agent
Ms. Lori Terraciano
80 South Jefferson Road
Whippany, NJ 07981

Certified Mail #7000 1670 0002 1529 8024

Dear Ms. Terraciano:

Regarding the Form 499-A filing requirement, we hereby assert our Fifth Amendment Right, and object to the Form 499-A as compulsory self-incrimination, as further set forth in our correspondence dated 17 March, 2001 enclosed herewith.

In lieu of your Form 499-A, we hereby submit the following company information and statement of financial information which meets the *de minimis standard*.

We thank you in advance for your assistance regarding this matter.

Respectfully,

Anthony J. Perillo
President

Encl. Company Information
Statement of Finances

PUERTO RICO

VIRGIN ISLANDS

CALIFORNIA

CALIFORNIA: P.O. Box 1769, Big Bear Lake, CA 92315
Telephone (909) 866-8112 Fax (909) 866-4304

Infinity Communications Group, Inc.

Billing Address: P.O. Box 1769
Big Bear Lake, California 92315

Shipping Address: 40712 Lake View Dr., #B
Big Bear Lake, California 92315

Contact Numbers: Telephone: (909) 866-8112
Facsimile: (909) 866-4304
Email: infinity@bbv.net
Web: www.infinitycommunications.com

Management: Mr. Anthony J. Perillo - President

EDN Number: 52-2125042

I hereby swear, under penalty of perjury, that to the best of my knowledge and belief, the information contained herein is true and correct.

Date: 03/26/2001 *WITHOUT PREJUDICE U.C.C. 1-207*

By: *Anthony J. Perillo*
Anthony J. Perillo - President

E: infinity@bbv.net

INFINITY COMMUNICATIONS GROUP, INC.

6379

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